



STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

GRETCHEN WHITMER  
GOVERNOR

ORLENE HAWKS  
DIRECTOR

STW Investments LLC,  
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 19-002585

City of Brighton,  
Respondent.

Presiding Judge  
Marcus L. Abood

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, STW Investments LLC, appeals ad valorem property tax assessments levied by Respondent, City of Brighton, against Parcel No. 47-18-31-204-003 for the 2019 tax year.<sup>1</sup> George R. Holton, Attorney, represented Petitioner, and Paul E. Burns and Jeffrey D. Alber, Attorneys, represented Respondent.

A hearing on this matter was held on November 9, 2020. Petitioner’s witnesses were Steven Williams and David Bur, real estate appraiser. Respondent’s witness was John R. Widmer, real estate appraiser.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash value (TCV), state equalized value (SEV), and taxable value (TV) of the subject property for the 2019 tax year is as follows:

Parcel No.	Year	TCV	SEV	TV
47-18-31-204-003	2019	\$700,000	\$350,000	\$335,620

<sup>1</sup> As noted in the prehearing summary, the 2019 amounts in contention between the parties are \$75,000 (SEV) and \$60,620 (TV).

## PETITIONER'S CONTENTIONS

Petitioner purchased the subject in 2016 for \$400,000 and made \$225,000 in renovations to the property in 2017. The property is developed with two separate buildings with different tenants. "The 810 building is a very functional office building that was renovated in 2017."<sup>2</sup> On the other hand, "The 802 building is a three-story residential building that was converted to offices. It's not a very functional office building because the second and third floors have not been renovated and there is no elevator to those spaces."<sup>3</sup> Petitioner is responsible for the common area and maintenance (CAM) expenses.<sup>4</sup>

Petitioner's appraiser contends the subject's renovations are reflected in his final opinion of value.<sup>5</sup> Overall, both buildings together are in "average" condition.<sup>6</sup> In other words, Petitioner's appraiser did not give a separate condition label to each building.

Petitioner contends its appraiser's market analysis includes the Brighton and Howell area.<sup>7</sup> Moreover, Bur uses the Detroit CSA for the subject market area.<sup>8</sup> Based on his radius circles, Petitioner's appraiser believes the City of Brighton is 90% built-up. Grand River Avenue is the main thoroughfare with a traffic count of 19,460 vehicles per day.<sup>9</sup>

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<sup>2</sup> Tr, 31.

<sup>3</sup> Tr, 32.

<sup>4</sup> Tr, 11.

<sup>5</sup> Tr, 64.

<sup>6</sup> Tr, 66.

<sup>7</sup> Tr, 68.

<sup>8</sup> Tr, 71.

<sup>9</sup> Tr, 90.

Petitioner further contends its purchase price is separate from the cost of renovations. Petitioner's appraiser argues that the \$225,000 in renovations to the subject are not part of the value of the property. He states, "In most cases renovations do not add up to 100 percent value."<sup>10</sup>

Petitioner's highest and best use analysis concludes that the subject is best suited as a professional office building.

Petitioner's income approach analyzed leased properties to determine a \$18.50/SF for the subject property. A vacancy and credit loss was determined to be 10%. From potential gross income, expenses were deducted to arrive at a net operating income. CAM was determined to be \$4/SF. Capitalization rates were analyzed to derive a loaded rate of 11.3% to then calculate an indication of value for this approach.

Petitioner's comparative analysis developed sales of office buildings in the subject market area with adjustments to arrive at an indication of value for this approach. Petitioner's appraiser contends there was limited data from the city of Brighton, so it was necessary to expand the market area to include the City of Howell. The comparable sale located at 120 Flint Street was renovated and is superior to the subject.

Petitioner considered all three approaches but only developed the income and sales comparison approaches to value. Through reconciliation most weight was given to the sales comparison approach because it best reflects the actions of market participants. Petitioner contends the TCV of the subject property is \$550,000.

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<sup>10</sup> Tr, 124.

### PETITIONER'S ADMITTED EXHIBITS

In support of its value contentions, Petitioner offered the following exhibits, which were admitted into evidence:

- P-1: Appraisal Report prepared by David Bur.
- P-2: Appraisal Report prepared by John Widmer.
- P-3: BS&A Information for 120 Flint Street.
- P-4: Drawing for 120 Flint Street.
- P-5: Offering for 120 Flint Street.
- P-6: Floor Sketch for 120 Flint Street.

### PETITIONER'S WITNESSES

Petitioner's first witness was Steven Williams, who is the owner of the subject property. He described the spaces within each building as well as the various tenants. Williams reviewed profit and loss statements for CAM items; however, he is not familiar with CAM expenses.

Petitioner's 2<sup>nd</sup> witness was David Bur who is a real estate appraiser in the state of Michigan. Through testimony, the witness's background, education, and experience was presented to the Tribunal. Based on this testimony, Mr. Bur was acknowledged and admitted as an expert in real estate appraisal.

### RESPONDENT'S CONTENTIONS

Respondent contends the subject's \$400,000 purchase price plus expenditures immediately after sale of \$225,000 is the total cost of the property at \$625,000.

Respondent asserts that the City of Brighton is "on fire" and in general there are no office vacancies. Brighton is a good office market within Livingston County. The subject is close to the central business district. On the other hand, Respondent argues that Petitioner did not develop or communicate a market analysis of the City of Brighton.

Respondent's appraiser did not note any functional obsolescence for the subject buildings and parking for the buildings is adequate.

Building 810 is a 1-story structure with 2,520 square feet above grade and another 2,520 in basement area. This building is in "good" condition. This building has an open floor plan.

Building 802 has 2,938 square feet and is "average" condition. Building 802 has shared office areas where tenant spaces were not delineated or demised.<sup>11</sup>

The buildings' combined gross building area is 5,458 square feet above grade. However, each building is meant for a single user.

Respondent's appraiser researched Costar and Realcomp for data. Macro analysis covered Livingston County and micro analysis was based on 1-mile, 3-mile and 5-mile radius which included Green Oak, Genova and Brighton townships. Southeast Michigan Council of Governments (SEMCOG) data was reviewed for City of Brighton demographics and indicated positive growth for both the city and county.<sup>12</sup>

Respondent's appraiser also analyzed vacancy rates in county in terms of frictional vacancy and market vacancy.<sup>13</sup> Building permits and traffic counts were also reviewed.

Respondent contends the comparable sale located at 403 East Grand River has basement area and is not considered to be lower-level space.

Regarding the income analysis, Respondent refutes Petitioner's expense comparable properties which have superior gross building areas (GBAs) and are

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<sup>11</sup> Tr, 218.

<sup>12</sup> Tr, 164 and 168.

<sup>13</sup> Tr, 169-170.

located in superior markets. Overall, Respondent questions Petitioner's lack of market data and analysis within the city of Brighton as well as within Livingston County.

Respondent considered all three approaches to value but only developed the income and sales comparison approaches. Respondent reasoned that the cost approach was not applicable due to the subject's age and because investors typically do not rely on this approach for commercial office buildings.

Respondent's income approach analyzed rental properties in the subject market area (City of Brighton) to derive potential gross income for the subject at \$18.27/SF. Rental data within the City of Brighton was attainable for analysis. Vacancy and credit loss was determined to be 5%. CAM was determined to be \$2/SF. Further analysis included expenses to derive a net operating income which was then applied to a reasonable capitalization rate of 11% for a conclusion of value.

Respondent's sales comparison approach was based on comparable sales in the West Michigan market. More specifically, sales data was attainable within the City of Brighton as well as Livingston County. Comparable sales adjustments were made including differences in GBA, age/condition, and quality/design.

Respondent reconciled the two approaches and gave slightly more weight to its income approach for final conclusions of value for 2019. Respondent contends the TCV of the subject property is \$700,000.<sup>14</sup>

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<sup>14</sup> Respondent argues that its TCV contention is a reduction from the original TCV assessment of \$830,400 for the subject property.

## RESPONDENT'S ADMITTED EXHIBITS

In support of its value contentions, Respondent offered the following exhibits, which were admitted into evidence:

- R-1: Appraisal Report prepared by John Widmer.
- R-2: 2018 and 2019 Subject Property Record Cards.
- R-3: Summary Listing of Sales.
- R-4: BS&A Record Card for 403 Grand River Avenue.
- R-5: Barton Property – Assessment Drawing.

## RESPONDENT'S WITNESS

Respondent's witness was John Widmer who is a real estate appraiser in the state of Michigan. Through testimony, the witness's background, education, and experience was presented to the Tribunal. Based on this testimony, Mr. Widmer was acknowledged and admitted as an expert in real estate appraisal.

## FINDINGS OF FACT

1. The subject property are located at 802 and 810 East Grand River Avenue, within the county of Livingston and in the City of Brighton.
2. The subject was originally developed as a residential dwelling.
3. The subject property is developed with two separate buildings ("802" and "810").
4. The combined gross building area above grade for the two buildings is 5,458 square feet.
5. The subject property is zoned C-3, Limited Business.
6. Petitioner purchased the subject property in December 2016 for \$400,000 on land contract terms.
7. Petitioner made \$225,000 in renovations to the subject building in 2017.<sup>15</sup>
8. Building 810 is tenant occupied by EctoHR Inc. (\$4,000/month) and the Williams, Knack, Burrows Law Firm (\$2,100/month).
9. Petitioner is a tenant in the 810 building.
10. Building 810 has common areas identified as the 1<sup>st</sup> floor reception area and hallway as well as the basement kitchen and break room.
11. Building 810's basement is utilized as a common area for tenants on the 1<sup>st</sup> floor. The basement is not leased out for tenant occupancy. The basement does not have fire escape windows or a separate ingress/egress to the exterior of the building.

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<sup>15</sup> Tr, 14 and 65. The cost of renovations is deemed as "expenditures immediately after purchase" Appraisal Institute, *The Appraisal of Real Estate* (Chicago, 15 ed, 2020), pp 385-386.

12. Building 802 is tenant occupied by Right to Life (\$650/month) and Padgett Business Services (\$800/month). The tenants are located on the first floor. The 2<sup>nd</sup> and 3<sup>rd</sup> floors are unoccupied. This building does not have a below grade foundation.
13. There is “no division between those tenant spaces”<sup>16</sup> for the first-floor tenants in building 802.
14. Petitioner pays common area and maintenance expenses for the subject property.
15. Petitioner submitted a valuation disclosure in the form of a narrative appraisal report prepared by David Bur.
16. Petitioner’s appraiser developed the income and sales comparison approaches to reconcile to a conclusion of market value for the subject property.
17. Petitioner’s comparable sales have no GBA size adjustments.
18. Petitioner’s range of adjusted comparable sales is \$68.79 to \$98.73; Bur concluded to an indication of \$100/SF.
19. Petitioner did not use any expense data from Livingston County.
20. Petitioner’s adjustment for CAM was based on his experience.<sup>17</sup>
21. Petitioner did not use any capitalization comparable sales data from Livingston county.
22. Petitioner’s appraiser denoted 2019 CAM of \$65,873, 2018 CAM of \$14,082, and 2017 CAM of \$33,078.
23. For the 2019 CAM of \$65,873, Petitioner’s appraiser extrapolated this amount because he only had five months of data (January to May).<sup>18</sup>
24. Respondent submitted a valuation disclosure in the form of a narrative appraisal report prepared by John Widmer.
25. Respondent’s appraiser developed the income and sales comparison approaches to reconcile to a conclusion of market value for the subject property.
26. Respondent’s appraiser’s comparable sales 1 and 2 are residential conversions to commercial office.
27. Respondent’s appraiser concluded that the subject’s basement area contributed \$6.25/SF to rent for the 810 Building.
28. Respondent’s rental comparable data is located within the City of Brighton.
29. The parties’ appraisers developed and analyzed a common comparable sale located at 10484 Citation Drive in Brighton Township.
30. The parties’ appraisers developed and analyzed a common comparable sale located at 403 East Grand River Avenue. Petitioner’s appraiser combined the above and below grade areas to arrive at a gross building area of 7,448 square feet. Respondent’s appraiser separated this property’s above and below grade areas; Respondent analyzed this sale’s gross building area as 4,216 square feet (above grade area only).

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<sup>16</sup> Tr, 32.

<sup>17</sup> Tr, 118-119.

<sup>18</sup> Tr, 133.

31. Within Petitioner's sales comparison adjustment grid<sup>19</sup>, the appraiser did not make a building size adjustment for the difference between the subject GBA of 5,458 square feet and 403 East Grand River's GBA of 7,448 square feet.
32. Within Respondent's sales comparison adjustment grid<sup>20</sup>, the appraiser did not make a building size adjustment for the difference between the subject GBA of 5,458 square feet and 403 East Grand River's GBA of 4,216 square feet.
33. The common comparable sale located at 403 East Grand River Avenue has below grade space which is rented to a tenant.
34. In their respective income analyses, Petitioner's appraiser concludes to a market rental rate of \$18.50/SF for the subject and Respondent's appraiser concludes to a market rental rate of \$18.27/SF for the subject. Petitioner's appraiser used a vacancy and credit loss of 10%. Respondent's appraiser used a vacancy and credit loss of 5%. Petitioner used \$4/SF for CAM and Respondent used \$2/SF for CAM. Petitioner's loaded capitalization rate is 11.3% and Respondent's loaded capitalization rate is 11%.

### CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its TCV.<sup>21</sup>

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not-exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of TCV of such property; the proportion of TCV at which such property shall be uniformly assessed, which shall not exceed 50 percent.<sup>22</sup>

The Michigan Legislature has defined "true cash value" to mean:

The usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be

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<sup>19</sup> Petitioner's Exhibit P-1, 58.

<sup>20</sup> Respondent's Exhibit P-1, 62. As a formatting note, Respondent's adjustment grid does not include the subject property (as a column) or address headings for each comparable sale. An adjustment grid should allow any reader the ability to view the subject and comparable sales in a full streamlined affect.

<sup>21</sup> See MCL 211.27a.

<sup>22</sup> Const 1963, art 9, sec 3.

obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.<sup>23</sup>

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”<sup>24</sup>

“By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment.”<sup>25</sup> The Tribunal is not bound to accept either of the parties' theories of valuation.<sup>26</sup> “It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case.”<sup>27</sup> In that regard, the Tribunal “may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination.”<sup>28</sup>

A proceeding before the Tax Tribunal is original, independent, and de novo.<sup>29</sup> The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”<sup>30</sup> “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”<sup>31</sup>

“The petitioner has the burden of proof in establishing the TCV of the property.”<sup>32</sup>  
“This burden encompasses two separate concepts: (1) the burden of persuasion, which

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<sup>23</sup> MCL 211.27(1).

<sup>24</sup> *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

<sup>25</sup> *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

<sup>26</sup> *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

<sup>27</sup> *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

<sup>28</sup> *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

<sup>29</sup> MCL 205.735a(2).

<sup>30</sup> *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

<sup>31</sup> *Jones & Laughlin Steel Corp*, *supra* at 352-353.

<sup>32</sup> MCL 205.737(3).

does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party.”<sup>33</sup> However, “[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.”<sup>34</sup>

The three most common approaches to valuation are the capitalization of income approach, the sales comparison, or market, approach, and the cost-less-depreciation approach.<sup>35</sup> “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”<sup>36</sup> The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the TCV of the property, utilizing an approach that provides the most accurate valuation under the circumstances.<sup>37</sup> Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.<sup>38</sup>

#### MARKET DESCRIPTION & ANALYSIS

The parties’ respective narrative appraisal reports include market descriptions and market analysis. Each presented market demographics, influences, and considerations. However, the level of detail between the parties’ market descriptions is

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<sup>33</sup> *Jones & Laughlin Steel Corp*, *supra* at 354-355.

<sup>34</sup> MCL 205.737(3).

<sup>35</sup> *Meadowlanes*, *supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), *aff’d* 380 Mich 390 (1968).

<sup>36</sup> *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

<sup>37</sup> *Antisdale*, *supra* at 277.

<sup>38</sup> See *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

different. Petitioner's appraiser's lack of knowledge for the Livingston market area as well as the City of Brighton was questioned by Respondent's counsel.<sup>39</sup> Petitioner's starting point of the Detroit Combined Statistical Area (CSA) for metropolitan Detroit which includes the Metropolitan Statistical Areas (MSAs) for Detroit, Ann Arbor, and Flint was acknowledged. Yet, such a broad focus was not properly drilled down by Petitioner. On one hand, Petitioner's appraiser admitted that demographics for the city of Brighton is completely relevant.<sup>40</sup> On the other hand, Petitioner's appraiser also admitted to not having analysis specific to the City of Brighton.<sup>41</sup> The chasm from the Detroit CSA to the general neighborhood of Brighton is neither meaningful nor persuasive. By contrast, Respondent's appraiser testified to his appraisal report which included greater detail for both Livingston County and the City of Brighton. Respondent's illustration of a regional location, a metropolitan location and a neighborhood location for the subject is purposeful. Specific traffic counts within the City of Brighton were provided by Respondent. Further, SEMCOG data was presented specifically for the city of Brighton and Livingston County.<sup>42</sup> Market activity and demographics were illustrated while acknowledging aspects of metro Detroit. Labor market information, an office market overview, vacancy rates, and market office rents (for Livingston county) were also illustrated and analyzed. Petitioner's market description and analysis is not more persuasive than Respondent's presentation and

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<sup>39</sup> Tr, 72-73.

<sup>40</sup> Tr, 77.

<sup>41</sup> Tr, 81 and 93.

<sup>42</sup> Respondent's appraiser demonstrated geographical competence by presenting a market description and analysis which dovetails his market data specifically to the subject property.

articulation. Therefore, Petitioner's market description and analysis is given no weight or credibility in the independent determination of market value for the subject property.

### INCOME APPROACH

Regarding the income approach to value, the parties' respective analyses considered the subject's viability for tenant occupancy. As noted, the subject is an income producing, tenant occupied property. Moreover, the parties' rental data indicates the existence of office rental space in the subject market. As noted in the Findings of Fact, the parties' similarities in income indicators and elements gives further credence to this approach to value. In their respective income analyses, Petitioner's appraiser concluded to a market rental rate of \$18.50/SF<sup>43</sup> for the subject and Respondent's appraiser concluded to a market rental rate of \$18.27/SF<sup>44</sup> for the subject property. However, Petitioner's appraiser used a vacancy and credit loss of 10%.<sup>45</sup> Respondent's appraiser used a vacancy and credit loss of 5%. Regarding expenses, Petitioner used \$4/SF for CAM<sup>46</sup> and Respondent used \$2/SF for CAM. Petitioner's appraiser relied on expense comparables located in superior locations (Bloomfield Hills, Birmingham and Southfield) with larger buildings. In testimony, Petitioner's appraiser admitted that he did not have any expense data from Livingston county. Regarding

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<sup>43</sup> Two out of three of Petitioner's rental comparables are located in Genoa Township (outside of the city of Brighton).

<sup>44</sup> All of Respondent's rental comparables are located in the city of Brighton.

<sup>45</sup> Petitioner's appraiser denoted a vacancy rate for the Brighton/Howell office market (Petitioner's Exhibit P-1, pp 25 and 67) without an articulation of the two particular cities or citing a source for this statistic.

<sup>46</sup> Petitioner's appraiser determination of CAM was based on his own judgment and experience (Tr, 118-119). More vexing is testimony between the Petitioner's property owner and its appraiser over CAM determinations (Tr, 130-133). Lastly, Petitioner's expense summary for CAM is quite varied (Petitioner's Exhibit P-1, 68).

overall expenses, Petitioner concluded to \$5.47/SF<sup>47</sup> and Respondent concluded to \$3.11/SF. The parties acknowledge the difference in overall expenses is principally due to the difference in CAM. While Petitioner's loaded capitalization rate is 11.3% and Respondent's loaded capitalization rate is 11%, again, Petitioner admitted to having no capitalization data from Livingston county.<sup>48</sup> Overall, Petitioner's income analysis is not more persuasive than Respondent's income data and market support with citations. As previously discussed, Respondent's market description and analysis is consistent with its income analysis. Weight and credibility are given to Respondent's rental rate, vacancy/credit loss, overall expenses (including CAM), net operating income, and capitalization rate resulting in the indication of its TCV of \$700,000. These income components are persuasively tied to the city of Brighton and Livingston County market analysis. Therefore, Petitioner's income approach is given no weight or credibility in the independent determination of market value for the subject property.

#### SALES COMPARISON APPROACH

The parties' respective sales comparison approaches are conventional methodologies for the comparative analysis of the subject property. Each party included sales data within the City of Brighton. Further, the cumulative sales data includes office buildings with and without below grade areas. Within the sales data, the parties have analyzed two common comparable sales located at 10484 Citation Drive and 430 East Grand River Avenue. Appropriately, the parties' common comparable

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<sup>47</sup> Petitioner's reliance on expense comparables located in Bloomfield Hills, Birmingham and Southfield were again refuted by Respondent. These properties are located in superior locations and have substantially larger buildings with superior amenities.

<sup>48</sup> Tr, 122.

sales provide a reasonable basis for the independent determination of market value for the subject property.

The common comparable sale located at 10484 Citation Drive is within Brighton Township. The parties have consistently analyzed this property's GBA as 9,962 square feet. This is a January 2019 sale located outside of the City of Brighton. This is a newer, larger building (YB: 2003) located within the Brighton Business Park which was deemed to be inferior by both parties. Given the overall characteristics of this is property, no weight or credibility is given to this common comparable sale.

The 2<sup>nd</sup> common comparable sale is located at 403 East Grand River Avenue in the City of Brighton and is similar to the subject in proximity to the central business district. Again, each party has delineated the subject's above and below grade areas in the analysis of GBA. However, the parties differ in the treatment of this common sale's above and below grade areas. Petitioner analyzed this sale by combining the above-grade building area and lower-level space. Respondent analyzed this common sale by separating above-grade and below grade area spaces. The Tribunal is persuaded that separating these spaces is logical especially when lower-level tenant space is distinguishable from the subject's basement. Moreover, Respondent refuted Petitioner's combined lower level and above grade spaces for this common comparable sale. Respondent's reference to comparing "apples to apples" is noteworthy in this instance. The subject's below-grade area is not used as leased office space but rather as common area<sup>49</sup> for the first floor tenants. Separating the lower-level space from the

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<sup>49</sup> Common areas utilized by tenants is distinguishable from shared office spaces. Said differently, shared office spaces (without established suite or unit delineations) is not common area.

GBA is consistent with the treatment of the subject property. Said differently, Petitioner has separated the subject's above-grade areas from its basement but analyzed this common comparable sale's combined above grade and lower level areas. Lower-level space with tenant occupancy and ingress/egress windows is different than the subject's basement area which is utilized for the first-floor tenants' common area. The lower-level tenant occupied space at 403 East Grand River Avenue is superior to the subject's basement common area space. Respondent analyzed the subject and this comparable consistently by separating these areas. There is no evidence showing the subject's basement area was constructed in contemplation for tenant occupancy. Regardless, neither appraiser made building size adjustments for this common sale.<sup>50</sup> Therefore, the separation of above grade and below grade areas is justified in the subject's comparative analysis.

Next, the parties' treatment of this common comparable sale resulted in dissimilar adjusted prices per square feet. Petitioner's adjusted sale price is \$98.73/SF<sup>51</sup> and Respondent's adjusted sale price is \$131.86/SF. A significant difference in these prices per square feet is attributed to Respondent's adjustment (\$25/SF) for quality/design to 403 East Grand River Avenue. Photographic evidence for this sale is convincing; the building is brick exterior construction with contemporary styling which incorporates the fire escape windows for the lower-level tenant occupancy. A reasoned and reconciled determination of market value is attainable from the parties'

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<sup>50</sup> Curiously, Petitioner's appraiser made no adjustments to his comparable sale GBAs; this omission was challenged and questioned by Respondent. Petitioner's lack of cogent explanation for this omission of any building size adjustments is nonsensical.

<sup>51</sup> Petitioner's appraiser's reasoning for numerical rounding outside of his range of adjusted comparable sales was also refuted by Respondent.

adjusted prices per square feet for this common comparable sale. Therefore, weight and credibility is given to Respondent's analytical treatment of this common comparable sale with above-grade GBA of 4,216 square feet.<sup>52</sup> This common comparable sale's separation of lower-level space is consistent with the analysis of the subject's GBA exclusion of the basement area.

Overall, Petitioner's valuation evidence is not more convincing than Respondent's approaches to value. Petitioner's representation of the subject's basement area does not signify area that is lower-level space for a separate tenant. This basement area does not have a separate entrance for a tenant. Again, this basement area is used as a common area for the 1<sup>st</sup> floor tenants. Respondent's valuation evidence is the most credible and reliable to the independent determination of market value for the subject property.<sup>53</sup> With a reasoned application, Respondent's comparative analysis for 403 East Grand River Avenue supports an indication of market value for the subject property at \$130/SF. Likewise, Respondent's income analysis and indication of value are properly supported by its market analysis and data from the City of Brighton.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the subject property was over-assessed for 2019. The subject

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<sup>52</sup> There is no dispute that smaller commercial space generally sells for larger \$/SF. Respondent's larger unadjusted \$/SF for 403 East Grand River Avenue is \$169.59/SF (based on above grade area only). Petitioner's unadjusted \$/SF for this common sale is \$96/SF (based on combined above grade and below grade areas). Again, Petitioner's omission of any building GBA adjustments to its comparable sales is contrary to the actions of buyers and sellers for commercial space.

<sup>53</sup> Respondent's appraiser's description of GBA market office space was presented with greater articulation and demonstrated geographical competency in the Livingston County and City of Brighton market areas.

property's TCV, SEV, and TV for the tax year(s) at issue are as stated in the Introduction section above.

### JUDGMENT

IT IS ORDERED that the property's state equalized and taxable values for the tax year(s) at issue are MODIFIED as set forth in the Introduction section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any

time period prior to 28 days after the issuance of this Final Opinion and Judgment.

Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (x) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (xi) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, (xii) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (xiii) after June 30 2020, through December 31, 2020, at the rate of 5.63%, and (xiv) after December 31, 2020, through June 30, 2021, at the rate of 4.25%.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

#### APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.<sup>54</sup> Because the final decision closes the case,

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<sup>54</sup> See TTR 261 and 257.

the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.<sup>55</sup> A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.<sup>56</sup> Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.<sup>57</sup> A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."<sup>58</sup> A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.<sup>59</sup> The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.<sup>60</sup>

Entered: May 10, 2021

By 

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<sup>55</sup> See TTR 217 and 267.

<sup>56</sup> See TTR 261 and 225.

<sup>57</sup> See TTR 261 and 257.

<sup>58</sup> See MCL 205.753 and MCR 7.204.

<sup>59</sup> See TTR 213.

<sup>60</sup> See TTR 217 and 267.